

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, and GEORGE P. BUSH, in his official capacity as Commissioner of the Texas General Land Office,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and ALEJANDRO MAYORKAS, in his official capacity as Secretary of the Department of Homeland Security,

Defendants.

No. 7:21-cv-00272

THE STATE OF MISSOURI; THE STATE OF TEXAS,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity as President of the United States, *et al.*

Defendants.

No. 7:21-cv-00420
(formerly No. 6:21-cv-00052)

**JOINT STATUS REPORT IN ADVANCE OF STATUS CONFERENCE SCHEDULED
FOR AUGUST 16, 2023**

The parties respectfully submit the following joint status report in advance of the status conference scheduled for August 16, 2023.

These consolidated cases involve challenges by the States of Texas and Missouri, and the Texas General Land Office and its Commissioner (GLO), to the federal government's spending policies for barrier infrastructure along the southern border of the United States. On the afternoon

of August 10, 2023, the cases were transferred from the Hon. Micaela Alvarez to this Court's docket. *See* ECF No. 92 (Case No. Case 7:21-cv-00272). At the time of the transfer, two unopposed motions related to the scheduling of further proceedings were pending. On July 7, 2023, the parties filed an unopposed joint motion proposing a case management and scheduling order for further proceedings in the cases. *See* ECF No. 90. The parties' proposed schedule was informed by instructions from the U.S. Court of Appeals for the Fifth Circuit directing the district court to "expeditiously consider the States' motion for a preliminary injunction." *See General Land Office v. Biden*, 71 F.4th 264, 268 (5th Cir. 2023). Also on July 7, GLO filed an unopposed motion to join the motion for preliminary injunction filed by Texas and Missouri. *See* ECF No. 91.

The parties agree that GLO's motion to join the motion for a preliminary injunction should be granted without adjustment.

The parties have recently conferred and agree that the Court should adjust the dates for any briefing addressing relevant updates since the preliminary injunction was briefed. The parties propose permitting federal Defendants to file such a supplemental brief on or before August 18, 2023. GLO and the States will file their supplemental response brief on or before September 8, 2023.

The federal Defendants request permission to exceed the Court's 5,000-word limit for its supplemental brief. Federal Defendants request that the word limit be enlarged to 26,000 words. Since the parties completed briefing on the preliminary injunction motion nearly two years ago, there have been significant legal and factual developments that necessitate the submission of a supplemental brief. These developments include (1) a recent Supreme Court decision addressing the States' theory of Article III standing, (2) an amended spending plan issued by the Department of Homeland Security setting forth lawful expenditures for its border barrier system appropriations, (3) the submission of the administrative record; and (4) recent construction activity along the southern border to improve the Nation's barrier infrastructure. Defendants believe the most efficient way to address these and other developments is through the submission of a

supplemental brief that replaces Defendants’ original opposition brief. This approach would likely assist the Court with its adjudication of the motion by having all of Defendants’ current legal and factual positions in a single brief. The alternative approach of a more limited supplemental brief directing the Court to various places in the original brief that require amendment or alteration through cross-references or red-lining instructions is neither practical nor efficient. Defendants’ approach also will result in the Court having to read fewer overall words. Instead of having to review Defendants’ original opposition (approx. 23,400 words) as amended by a supplemental brief (5,000 words), a single brief of 26,000 words would be shorter and present Defendants’ arguments in a more streamlined fashion for the Court.

Plaintiffs oppose this request because it will bury the Court in unnecessary paper and further delay proceedings and Plaintiffs’ relief—which has already been stalled due to an incorrect district court decision. Aside from any relevant updates, the parties have fully addressed the legal and factual issues presented in this case. The original briefing for the motion for preliminary injunction was extensive containing 48,712 words: 13,033 words for the States’ motion, 23,401 words for the Government’s opposition, and 12,278 words for the States’ Reply. Federal Defendants’ proposal to add up to 56,000 words would more than double the current briefing and that does not include the exhibits. Federal Defendants have also failed to show any need for such an extension of the word limit because they have not even hinted why their “most current” arguments require more than 5,000 words to explain. The intervening appellate decisions are short, and they do not change the motion for a preliminary injunction, as the most recent appellate decision addressed standing and claim splitting. Defendants propose that such additional briefing would streamline consideration due to the filing of the Administrative Record and continued adjustments by the federal government. But they have already filed the amended spending plan, Dkt. 52, and the Fifth Circuit implicitly rejected its relevance when the Federal Defendants highlighted it as a reason the district court properly dismissed the case, U.S. Br. at 12 (“Under DHS’s amended spending plan for border-barrier construction...”). Federal Defendants certainly

do not need 26,000 words (equivalent to two full appellate briefs) to provide the Court with an update.

Date: August 15, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2023, I electronically filed a copy of the foregoing joint status report. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Andrew I. Warden

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